

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOCEYLN R. CROAL and DEPARTMENT OF THE ARMY,  
Fort McPherson, GA

*Docket No. 01-1145; Submitted on the Record;  
Issued February 24, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective January 28, 2001.

Appellant, then a 36-year-old sales store checker, sustained a left foot injury on July 19, 1990 when a coworker dropped a tray of money on her foot. The Office approved the claim for the condition of contusion, left foot; small chip fracture, left talonavicular joint. Appellant returned to a limited duty, sedentary position on October 15, 1990. The Office subsequently approved appellant's depression as a consequential injury associated with the pain from the work injury. Appellant has not worked in any capacity since April 29, 1992. The Office subsequently authorized surgery on appellant's left foot, which she underwent on March 11, 1998.

As no new reports had been received since appellant's March 11, 1998 ankle surgery, the Office determined that second opinion evaluations of appellant's conditions were necessary and referred her for examination.

In a report dated March 31, 1999, Dr. John R. Gleason, an Office referral physician and a Board-certified orthopedic surgeon specializing in surgery of the foot and ankle, provided the results of his examination and reviewed the medical record along with the statement of accepted facts. He diagnosed a previous foot contusion with a talonavicular fracture that had resolved. He found no evidence of physical organic disease causing her foot and ankle pain and chronic pain syndrome that was being treated by a chronic pain management program and psychological treatment. He stated that x-rays were obtained to further delineate the talonavicular fracture, which was not evident on any of the current films taken. Dr. Gleason noted that appellant also had no severe disuse osteoporosis or osteopenia, which would be expected in someone who could not weight bear on her foot for any extended periods of time. Based on his examination, review of the medical records file and appellant's evaluation, Dr. Gleason opined that appellant's subjective complaints severely outweighed her objective findings for her foot abnormality. He

opined that there were no current disability residuals caused from the work injury of July 19, 1990, that the accepted left foot condition had resolved and that appellant's continued foot pain was not tied to any objective findings. He found that appellant could resume her regular employment as a sales store checker.

In an April 1, 1999 report, Dr. Russell Bruce Prince, an Office referral physician and a Board-certified psychiatrist, diagnosed major depression, severe, with psychotic features, causally related to her work injury. He related that the fact that appellant had not been in the workplace had nothing to do with her present condition. Dr. Prince stated that, in appellant's mind, she was in the workplace every day, like a person who had post-traumatic stress disorder. He related that, although appellant had other conditions in terms of her obesity, hypertension and thyroid problems, she did not obsess about these problems. He found no information indicating any previous psychiatric difficulty prior to the time of her injury. Dr. Prince further opined that appellant was not capable of performing her previous duties as her concentration and attention was turned inwards. She remained totally disabled as a result of her continuing employment-related psychiatric condition.

In a letter dated June 10, 1999, the Office requested Dr. Prince to clarify his report. Specifically, the Office inquired how appellant's depression could still be related to pain from the injury, as Dr. Gleason had found that there was no objective evidence of any remaining ankle injury.

In a June 15, 1999 report, Dr. Prince stated that the issue he was attempting to speak to had to do with appellant's major depression with psychotic features and her pain disorder. He stated that regardless of objective findings, appellant continued to focus on her foot. He stated that, as to why appellant remained locked into the injury of July 1990, he could not answer. But, she had over the years focused on it in terms of her psychotic symptoms. Reference was made to appellant's hallucinatory experiences and her dreams. Dr. Prince stated that to demonstrate psychotic symptoms there must be some significant decrease in the capacity to distinguish external from internal reality. Dr. Prince stated that he could find no other cause for her psychotic depression other than the syndrome that was triggered by the injury of July 19, 1990. He noted that he obtained no history of any previous psychological difficulties. He noted that, in order to try and understand someone with psychotic elaboration of a particular syndrome, no understanding would be gained by a rational approach.

In a memorandum to the file, the Office found that Dr. Prince's medical opinions were not well rationalized and that his clarification report lacked rationale substantiating his medical opinion. Accordingly, the Office determined that a new second opinion evaluation was necessary.

In an August 16, 1999 medical report, Dr. Robert J. Alpern, an Office referral physician and a Board-certified psychiatrist, opined that the condition of depression was still active and causing symptoms. Dr. Alpern advised that significant hypothyroidism could produce many of the same symptoms needed to be ruled out as an underlying or associated cause of her emotional symptoms. Dr. Alpern stated that the psychiatric illness itself was not a product of logic and, accordingly, could not be explained logically. As was typical of many psychiatric syndromes, the criteria for determining her diagnosis was subjective rather than objective. Dr. Alpern

opined that appellant did elaborate or exaggerate her symptoms, derived secondary gain (albeit minimal and self-defeating) from her condition and was convinced that she was due some form of compensation for her perceived suffering; hence, Dr. Alpern made a secondary diagnosis of somatoform pain disorder. Dr. Alpern stated, however, that he regarded appellant as having a severe chronic depression, triggered by the employment injury and not yielding to treatment. Dr. Alpern stated that her depression was triggered by the work injury and persisted despite orthopedic correction of the problems. He stated that the residuals of the disorder were emotional and behavioral and precluded her from functioning in a normal or very sheltered work environment. Dr. Alpern recommended a recent evaluation of her thyroid status by an internist/endocrinologist.

In an April 11, 2000 report, Dr. Yssa Saad-Dine, an endocrinologist, advised that appellant's thyroid tests were normal and that she should continue her current medication regime.

In a July 14, 2000 report, Dr. Alpern indicated that he received the results from the endocrinologist, which indicated that appellant had normal thyroid function and reviewed the results of the psychological tests and computer-scored reports. He opined that although three of the four tests were unreliable, the test data indicated the ongoing presence of severe psychotic depression. Dr. Alpern opined that such condition would contribute to appellant's disability from work and was independent of the initial mild orthopedic injury that triggered the psychiatric problem. He advised that chronic pain syndrome frequently occurred in the absence of objectively documented physical organic disease. Appellant's nonwork-related condition has emerged from an originally mild physical injury.<sup>1</sup> Her mental condition was irrational and, while not a logical consequence of the injury, nonetheless remained chronic and unresponsive to treatment.

In an August 10, 2000 letter, the Office asked Dr. Alpern to clarify his opinion regarding causation. The Office inquired how appellant's severe mental disorder was causally related to her physical condition, which had resolved.

In an August 25, 2000 report, Dr. Alpern stated that when he examined appellant on August 13, 1999, he made an Axis I diagnosis of major depressive disorder with psychotic features. This condition was triggered by a relatively mild injury at work. Appellant's Axis II diagnosis was mixed personality disorder with paranoid and dependent traits. Appellant subsequently underwent psychological testing. Dr. Alpern reiterated his opinion that appellant's major depressive disorder with psychotic features was triggered by the employment injury. Examination revealed the presence of severe psychotic depression.

In an August 1, 2000 treatment note, Dr. Richard R. Mouzon, appellant's attending clinical psychologist, advised that appellant was still dealing with issues of chronic pain,

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<sup>1</sup> Dr. Alpern stated that, on the basis of the test data, it may be assumed that appellant was experiencing a severe mental disorder. He stated that she fit either a depressive personality disorder, schizoid personality disorder, paranoid personality disorder with self-defeating traits, bipolar disorder (mixed, with psychotic features), post-traumatic stress disorder and adjustment disorder with mixed anxiety and depressed mood.

depression and anxiety. He noted appellant's current problems and advised that it was difficult for her to perform activities of daily living. He noted that appellant's pain was still intense and kept her incapacitated most of the time.

On November 20, 2000 the Office issued a notice of proposed termination of disability and medical benefits. The Office accorded determinative weight to the opinions of Drs. Gleason and Alpern, which found that appellant's accepted foot condition had resolved and that her current emotional condition was not medically connected to the work-related injury. Appellant was given 30 days to submit evidence to support the continuation of benefits.

In response to the notice of proposed termination, appellant submitted treatment notes dated June 27, 1997 through April 27, 2000, by various physicians which concerned a lumbar condition with neck pain and carpal tunnel syndrome. Magnetic resonance imaging impressions of the cervical and lumbar regions along with electromyography examinations were included. Dr. Michael V. Yancey, a Board-certified neurologist, in a June 27, 1997 report, noted that, after the work injury, appellant began favoring her left foot and started walking bent over to the side to keep pressure off the foot and back pain developed after about four months.

By decision dated January 5, 2001, the Office terminated appellant's compensation and medical benefits effective January 28, 2001. The Office found that Dr. Yancey's diagnosis of lumbar pain associated with the work injury was not rationalized as he failed to provide an opinion pertaining to causation with the accepted orthopedic condition.

By letter postmarked March 7, 2001, appellant requested an appeal before the Board and requested an oral hearing.<sup>2</sup> In a letter dated January 30, 2002, the Board scheduled oral argument for November 19, 2002. In a letter dated November 1, 2002, appellant notified the Board that she would be unable to attend the oral argument. New medical evidence was also submitted. The instant decision follows.

The Board finds that appellant's employment-related disability for her accepted left foot conditions ceased by January 28, 2001, the date the Office terminated her compensation benefits.

It is well established that once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related

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<sup>2</sup> Following the date of the appeal on March 7, 2001, the Office issued a subsequent decision on April 9, 2001 which the Board finds to be null and void. The Board has held that the Office does not have jurisdiction to issue a decision on a request for an oral hearing while the case is pending before the Board on the same issue; see *Russell E. Lehman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990). Because appellant's request for an oral hearing filed before the Office on March 6, 2001 related to termination of her compensation benefits, the issue on appeal before the Board, the Office improperly issued its April 9, 2001 decision. The Board notes further that it is unable to review the additional medical evidence submitted by appellant as part of her appeal before the Board. Under section 501.2(c) of the Board's *Rules of Procedure* (20 C.F.R. § 501.2(c)), the Board is precluded from reviewing evidence, which was not before the Office at the time it issued its final decision. Appellant may request the Office to review the new medical evidence, together with a request for reconsideration, following the issuance of this decision by the Board.

to the employment.<sup>3</sup> Thus, the burden of proof is on the Office rather than the employee with respect to the period subsequent to the date when compensation is terminated or modified.<sup>4</sup>

In the present case, the Office accepted appellant's claim for a left foot contusion, small chip fracture of the left talonavicular joint and authorized a left foot surgery, which appellant underwent March 11, 1998. The Office additionally accepted appellant's emotional condition as a consequential condition.

Dr. Gleason, a Board-certified orthopedic surgeon and Office referral physician, opined that the x-rays of appellant's foot and ankle no evidence of the accepted talonavicular fracture. He also noted that appellant did not have severe disuse osteoporosis or osteopenia, which would be expected in someone who could not bear weight on her foot for any extended period of time. He opined that appellant's subjective complaints severely outweighed her objective findings for her foot abnormality. He further opined that there were no residuals from the work injury of July 19, 1990, the accepted left foot conditions had resolved and appellant's continued foot pain was not tied to any objective findings. There is no other medical evidence of record negating Dr. Gleason's opinion that appellant no longer has residuals from her accepted foot conditions. The Office met its burden to terminate appellant's compensation benefits effective January 28, 2001.

The Office, however, failed to meet its burden to terminate appellant's compensation benefits for her accepted emotional condition.

Dr. Prince, a Board-certified psychiatrist and Office referral physician, opined that appellant's emotional condition was causally related to her work injury. He stated, in his June 19, 1999 report, that he could find no other cause for appellant's psychotic depression other than the syndrome which was triggered by the injury of July 19, 1990. The Office found Dr. Prince's reports not to be well rationalized and thereafter referred appellant to Dr. Alpern.

In terminating appellant's benefits, the Office relied upon the reports of Dr. Alpern, a Board-certified psychiatrist and Office referral physician, who opined that despite orthopedic corrections of appellant's accepted work-related condition, appellant's severe chronic depression, was triggered by the employment injury, but did not yield to treatment because of the psychotic or paranoid features or for reasons that defied explanation. After ruling out the possibility of a thyroid problem, Dr. Alpern administered psychological testing which revealed the presence of severe psychotic depression. He initially explained that her depression was active and causing symptoms. In a July 14, 2000 report, he noted the ongoing presence of severe psychotic depression.

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<sup>3</sup> *David W. Green*, 43 ECAB 883 (1992); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *Harold S. McGough*, 36 ECAB 332 (1984); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>4</sup> *Eddie Franklin*, 51 ECAB 223 (1999); *Craig M. Crenshaw, Jr.*, 40 ECAB 910, 922 (1989); *Edwin L. Lester*, 34 ECAB 1807 (1983).

The Board finds that, although the Office had relied upon Dr. Alpern's opinion in terminating benefits for her accepted emotional condition, the reports of Dr. Alpern are not sufficiently well rationalized to find that the accepted emotional condition had resolved. Dr. Alpern noted that appellant's condition of depression was still active and causing symptoms. He noted that, while appellant exaggerated her symptoms, she had chronic depression which was triggered by her physical injury and had not yielded to treatment. His additional reports diagnosed depressive disorder and do not clearly establish with a well-rationalized medical opinion that the condition has resolved. For this reason, the Office may not rely upon Dr. Alpern's reports in terminating benefits. As the Office has not met its burden of proof in terminating compensation for the accepted emotional condition, this portion of the Office's decision is reversed.

Additionally, the Office properly found that appellant had not met her burden of proof in showing that the July 19, 1990 injury either directly or indirectly caused appellant's back problem and back pain. Appellant alleged that her back problem arose from the work injury of July 19, 1990, however, the mere fact that a condition was asymptomatic before an injury and symptomatic after it, is not sufficient, absent supporting rationale, to establish a causal relationship between the two.<sup>5</sup> Although the Office properly noted that Dr. Yancey diagnosed lumbar pain associated with the work injury in the factual and medical history portions of his report, there was no discussion on causal relation to the accepted orthopedic condition. Moreover, review of the objective medical testing conducted in the regions of appellant's cervical and lumbar regions are not supported by a medical opinion rationalizing the findings to appellant's work injury. Accordingly, the new evidence appellant submitted is insufficient to establish that her other nonwork-related conditions were causally related to the work injury of July 19, 1990.

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<sup>5</sup> See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (finding that the fact that appellant was asymptomatic before an injury but symptomatic afterward is insufficient to establish, absent supporting rationale, a causal relationship); see also *Kimper Lee*, 45 ECAB 565, 574 (1994) (finding that a physician's rationale that appellant's condition was related to a previous lifting injury because appellant reported no similar problem prior to that accepted injury was insufficient to establish a causal relationship).

The January 5, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed in part and reversed in part.

Dated, Washington, DC  
February 24, 2003

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member